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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-101-30648

Office: WASHINGTON, D.C.

Date: FEB 09 2009

IN RE: Applicant:

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Field Office Director, Washington, D.C. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On January 22, 2008, the applicant filed a Form I-290B notice to appeal the denial of his application. Pursuant to 8 C.F.R. § 103.3(a)(3)(ii), an appeal of the denial of an application for temporary resident status under section 245A of the Act shall be filed on a Form I-694. In the present case, the applicant incorrectly filed his appeal notice on a Form I-290B. Based upon the incorrect filing of the appeal notice, the director treated the appeal as a motion to reopen and reconsider. The director reviewed the record and determined that it did not reveal any errors of fact, law or procedure that would warrant a reconsideration of the decision, and dismissed the motion. On August 7, 2008, the applicant filed a Form I-290B motion to reopen his Form I-687 application. Although motions to reopen a proceeding or reconsider a decision shall not be considered under Section 245A of the Act, the AAO may *sua sponte* reopen and reconsider any adverse decision. 8 C.F.R. § 245a.2(q). The AAO will *sua sponte* reopen the proceeding, and will issue a decision on the merits of the application based on its *de novo* review of the file.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page

10. The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits and letters (hereinafter referred to as “statements”) of relationship written by friends, employment verification letters, a letter from the applicant's former landlord, letters related to the applicant's medical records, an attestation from a representative of a Mosque and Islamic Center in New York, an attestation from a representative of the Bangladesh Society in New York, a letter from an international aid organization, and a bank letter. The applicant also furnished copies of concert tickets issued during the requisite period; however they are without any probative value because they do not contain any information to link them to the applicant. The AAO has reviewed

each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record reflects that the applicant furnished statements of relationship from [REDACTED] and [REDACTED]

All of these statements indicate that the authors have known the applicant since the 1980s and that they attest to the applicant being physically present in the United States during the required period. However, none of the statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the statements. To be considered probative and credible, witness statements must do more than simply state that the author knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value as corroborating evidence.

The applicant submitted an affidavit from [REDACTED] stating that the applicant resided with him from August 1981 to June 1985 at the following address:

[REDACTED] Elmhurst, New York; [REDACTED] Bronx, New York and [REDACTED] Brooklyn, New York.² Additionally, the applicant furnished an affidavit from [REDACTED], stating that he was the owner of [REDACTED] during the applicant's residence at this location from February 1982 to December 1984. [REDACTED] indicated that the applicant rented his apartment from the leaseholder, [REDACTED]. Neither of these affidavits provides credible and concrete information regarding the applicant's residence in the United States. The affidavit from [REDACTED] fails to illustrate his living arrangement/agreement with the applicant during their residence together from August 1981 to June 1985. As stated, probative and credible witness statements must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Furthermore, the affidavit from [REDACTED], dated August 14, 2005, fails to explain how he was able to date the applicant's subtenancy at his apartment in February 1982. Given these deficiencies, these affidavits are of little probative value as corroborating evidence.

¹ The applicant furnished two witness statements from [REDACTED] respectively dated April 4, 2006 and February 16, 2008.

The applicant furnished a typed rent receipt from [REDACTED] for his payment of rent at [REDACTED]

The applicant submitted employment verification letters from: [REDACTED]

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where such records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F).

None of the statements fully comply with the above cited regulation because they do not: provide the applicant's address(es) during the time of employment; describe his duties with the company; and convey whether the information regarding the applicant's employment was taken from official company records, where such records are located, and whether U.S. Citizenship and Immigration Services (USCIS) may have access to the records. Moreover, the letter from Unique Style & Art does not provide the applicant's exact period of employment with the company. Although the remaining letters state the applicant's exact period of employment, it is unclear how the authors were able to date the applicant's employment with their respective companies in lieu of official employment records. Finally, the letters from E [REDACTED] do not provide their respective addresses to establish that they were located in the United States during the requisite period. Accordingly, these letters are of minimal probative value as corroborating evidence.

The applicant submitted the following statements regarding his medical records: a letter from [REDACTED]

Chief of Registration, Out Patient Department, Bronx-Lebanon Hospital; a letter from [REDACTED], Supervisor, Out Patient Services, St. John's Queens Hospital; a letter from Brooklyn Health Network Tobacco Cessation Program; and a letter from [REDACTED]. None of these letters provide specific, concrete, and reliable information related to the applicant's presence or residence in the United States during the requisite period. For instance, [REDACTED] states in his letter that he can be contacted with any questions, but he does not provide a contact phone number or address. The absence of contact information to verify the authenticity of [REDACTED]'s letter casts doubt upon its credibility. In addition, the letter from the Brooklyn Health Network Tobacco Cessation Program is of questionable credibility due to the content of letter. The letter, addressed to the applicant, provides, "We are *encouraged* that you have missed your scheduled appointment [sic]. We would like to hear from you as early as possible so that we may continue to help you through the process to Tobacco Cessation." (emphasis added). The unintelligible language of this letter casts doubt upon its credibility. Furthermore, the letter from [REDACTED], dated January 10, 2008, is vague and lacking specific detail. The letter states that according to the physician's office records, the applicant visited his office in September 1984 and was suffering from "acute sickness," and was under his treatment in November 1984 for "cold related allergies." However, there is no information on the medical diagnosis related to these conditions and the prescribed

treatment plans.³ Finally, the letter from [REDACTED] dated February 10, 2008, fails to explain how he was able to date the applicant's ten visits to St. John's Queens Hospital during the requisite period. It does not explain whether he referred to hospital records from over twenty years ago or relied on documentation/testimony from the applicant. Given these deficiencies, these letters have minimal probative value as corroborating evidence.

The applicant submitted the following attestations from the Madina Mosque and the Bangladesh Society Inc., New York. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

Neither of the statements fully complies with the above cited regulation. The statement from the Madina Mosque does not: state the address(es) where the applicant resided during the membership period; establish in detail that the author, [REDACTED], knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. Additionally, the statement from the Bangladesh Society Inc., New York, does not: state the addresses where the applicant resided during the membership period; and establish in detail that the author, [REDACTED] President of the Bangladesh Society, knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period. It should be noted that the applicant also submitted a letter from [REDACTED], Volunteer Resources Coordinator, Help For Helpless International, stating that the applicant brought his group from the Bangladesh Society New York to volunteer with her organization on March 10, 1988. However, the membership letter from [REDACTED] fails to mention that the applicant had any type of leadership role with the Bangladesh Society, thus, casting doubt upon the credibility of [REDACTED] letter. Given these deficiencies, these letters are of minimal probative value as corroborating evidence.

The remaining evidence in the record consists of: a letter from Queens County Savings Bank, dated January 22, 1988, requesting the applicant's social security or taxpayer identification number; and a letter from the Consulate General of Bangladesh, New York, dated March 18, 1988, requesting a copy of the applicant's Birth Certificate. These letters only establish the applicant's residence in the United States during the periods they were issued, January 1988 and March 1988. Therefore, they,

[REDACTED] letter, dated January 10, 2008, provides an office address in Woodside, New York. However, the New York State Education Department's Office of the Professions online verification site shows that Dr. [REDACTED] has an inactive New York State license and is currently based in Coral Springs, Florida.

alone, do not demonstrate that the applicant entered the United States before January 1, 1982 and continuously resided in the United States for the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The applicant's evidence, when viewed within the totality, is of minimal probative value.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.